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United States
Circuit Court of Appeals
For the Ninth Circuit.

W. W. KEYES, Trustee of the Estate of CHE-
HALIS RIVER LUMBER & SHINGLE
COMPANY, a Corporation, Bankrupt,
Appellant,

vs.

W. C. DAVIE,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Western District of Washington,
Western Division.

Filed

JAN 20 1916

F. D. Monckton,

United States
Circuit Court of Appeals
For the Ninth Circuit.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

RAYMOND J. McMILLAN, Esquire, Bank of California Building, Tacoma, Washington, and
ERNEST K. MURRAY, Esquire, Bank of California Building, Tacoma, Washington,

Attorneys for the Trustee W. W. Keyes,
and Appellant.

VAN M. DOWD, Esquire, Fidelity Building,
Tacoma, Washington,

Attorney for Claimant W. C. Davie, and
Appellee. [1*]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. 1655.

In the Matter of CHEHALIS RIVER LUMBER &
SHINGLE COMPANY, a Corporation,
Bankrupt.

Stipulation as to Record of Appeal.

Whereas, in the above-entitled proceedings the trustee, W. W. Keyes, did on the 15th day of December, 1915, duly file in the District Court of the United States for the Western District of Washington, a petition for appeal, a citation and assignment of errors, which said appeal was allowed by order of the District Court upon said day.

NOW, THEREFORE, it is hereby stipulated that the record to be certified to this court by the clerk of the United States District Court for the Western

*Page-number appearing at foot of page of original certified Record.

District of Washington on said appeal shall consist of the following:

1. This stipulation.
2. Proof of claim of W. C. Davie.
3. Objections of trustee thereto.
4. Transcript of testimony taken at hearing before referee.
5. Opinion of referee.
6. Order of referee overruling objections.
7. Petition for review, omitting exhibit "A."
8. Referee's certificate of review.
9. Opinion of District Judge.
10. Order affirming referee's order. [2]
11. Assignment of errors.
12. Petition for appeal and order thereon.
13. Citation.

It is further stipulated and agreed that there may be omitted from the foregoing in each case the title of the court, the title of the cause and all verifications and indorsements, and

[Stipulation as to Certain Facts.]

It is further stipulated and agreed for the purpose of the record that the following facts are true: That the above-named bankrupt was a corporation engaged in the manufacture and sale of lumber and shingles, and that its average capacity and output was one hundred thousand feet of lumber and one hundred twenty thousand shingles per day, and that at the time of bankruptcy and prior thereto approximately two hundred twenty men were employed by the bankrupt.

Dated Tacoma, Washington, December 17th,
1915.

RAYMOND J. McMILLAN,

E. K. MURRAY,

Attorneys for Trustee-Appellant.

VAN M. DOWD,

Attorney for Claimant-Respondent.

(Filed Dec. 18, 1915.) [3]

Proof of Claim in Bankruptcy.

At Centralia, in said District of Washington, on the 7th day of July, A. D. 1915, came W. C. Davie, of Centralia, in the county of Lewis, in said District of Washington, and made oath and says that the Chehalis River Lumber & Shingle Co., the person by whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition and still is, justly and truly indebted to said deponent in the sum of five hundred eighty-seven and 55/100 (587.55) dollars; that the consideration of said debt is as follows: services as manager of the Chehalis River Lumber & Shingle Co. during the six months next preceding the commencement of proceedings herein, a bill of items of which said account is hereto annexed; that deponent claims a prior lien against all lumber and shingles belonging to said company at the time of the filing of said petition and the proceeds thereof, under and by virtue of the statutes of the State of Washington, to wit, R. B. 1149 and R. B. 1162, and considers the filing of notice of said lien waived by virtue of an order of this Court in this cause dated October 7th, 1914; that no part

of said debt has been paid; that there are no set-offs or counterclaims to the same, that no judgment has ever been recovered thereon, that no note has been received for said account; and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

W. C. DAVIE,
Creditor.

Subscribed and sworn to before me this 7th day of July, A. D. 1915.

GEO. C. ELLSBURY,
Notary Public in and for the State of Washington,
Residing in Centralia in said State. [4]

Statement.

Centralia, Wash., Sept. 23, 1915.

Mr. W. C. Davie,

In Account With

Chehalis River Lumber & Shingle Co.

Bills not paid promptly, subject to sight draft without notice.

Interest chargeable on all accounts after date.

Date.	Debit.	Credit.
Sept. 23,	1,142.45	
Apr. 30, By Salary @ 300.00 per mo.		300.00
May 31, “		300.00
Jun. 30, “		300.00
July 31, “		300.00

W. C. Davie. 5

Aug. 31,	“	300.00
Sept. 23,	“	230.00

	1,142.45	1,730.00
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		1,142.45
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	Balance	587.55
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(Filed Jul. 8, 1915.) [5]

[Title of Court and Cause.]

Objections to Claim of W. C. Davie.

Comes now W. W. Keyes, the trustee herein, and objects to the claim of W. C. Davie, filed herein on the 8th day of July, 1915, for the sum of \$587.55, in so far as the same purports to be a lien claim against the lumber and shingles of the bankrupt on hand at the time of the filing of the petition for adjudication herein, and in so far as the same purports to be a claim entitled to priority of payment from the funds realized from the sale thereof, for the reason that said claimant was the president and general manager of the above-named bankrupt and the owner of all but a few of its shares of capital stock, and for the reason that said claim does not state facts sufficient to constitute a lien against said lumber and shingles or a claim entitled to priority of payment from the proceeds of sale thereof, within the mean-

ing of the bankruptcy act or of the laws of the State of Washington.

W. W. KEYES,
Trustee.

RAYMOND J. McMILLAN,
E. K. MURRAY,

Attorneys for Trustee.

(Filed Jul. 13, 1915.) [6]

Transcript of Testimony.

**Hearing on Objections of Trustee to Preferred Claim
of W. C. Davie.**

Before: Hon. R. F. LAFFOON, Referee in Bankruptcy.

July 12, 1915, 2:30 P. M.

Present: W. C. DAVIE, Claimant,
VAN M. DOWD, Atty. for Claimant,
E. K. MURRAY, Atty. for Trustee.

Mr. MURRAY.—The trustee objects to the claim of Mr. Davie as a preferred claim because he is the general manager and president and owner of practically all the company's shares of stock; and his claim does not come within the statute of the State of Washington allowing a lienor priority of payment.

[Testimony of W. C. Davie, for Claimant.]

Mr. W. C. DAVIE, being first duly sworn, on oath testified as follows:

Direct Examination by Mr. MURRAY.

Q. You are the claimant in this proceeding?

A. Yes, sir.

Q. What position did you hold with the bankrupt

(Testimony of W. C. Davie.)

prior to its bankruptcy? A. I was manager.

Q. You are also president of the company?

A. Yes, sir.

Q. How much of the capital stock did you own?

A. All but one share.

Q. What did your duties as manager consist of?

A. I managed the whole property. I looked after the making of the orders; the collection of the money, and the getting of the timber, and the buying of the timber, and manufacturing the lumber and the shingles. [7]

Q. You had charge of everything? A. Yes, sir.

Q. Did you have a woods' foreman under you?

A. Yes, sir.

Q. Did you have a log foreman? A. Yes, sir.

Q. Did you have a mill foreman? A. Yes, sir.

Q. And a shingle mill foreman? A. Yes, sir.

Q. You made the financial arrangements with the bank?

A. I did everything; I was the whole thing. I hired the men and I discharged them.

Cross-examination by Mr. DOWD.

Q. Is it a general rule for a lumber company the size of the Chehalis River Lumber & Shingle Company to have a general manager? A. Yes, sir.

Mr. MURRAY.—I will concede that.

Mr. DOWD.—If you had resigned would it have been necessary to have a general manager?

A. Yes, sir.

Q. Was it part of your duties to handle the correspondence? A. Yes, sir.

(Testimony of W. C. Davie.)

Q. Your duties required your presence in the office a great portion of the day?

A. Yes, sir. I was in the office, in the woods, and out soliciting orders.

Q. What was your salary as manager? [8]

A. Three hundred dollars per month.

REFEREE.—Who fixed your salary, Mr. Davie?

A. The salary was fixed by the board prior to my going there. The former manager got \$300 per month, and I continued with it.

Q. Who was on the board?

A. Dr. Francis, Mrs. Davie and myself. We fixed the salary to a previous matter at \$300 per month. When I took charge I continued it on.

Q. When you took charge you owned all the shares but one. Who owned that?

A. Mr. Dysart. My wife had some. I do not know how much.

Q. You and your wife held all but one share controlled by Dysart? A. Yes, sir.

Q. Dysart was manager of the bank?

A. Yes, sir, and secretary of the company.

Q. Did Dysart get any salary?

A. No, sir. When we reorganized that time and the other man went out the bank had some pull that pulled the other man out bodily. Dysart got the stock and delivered all but one share, which I was to get when we pulled out of debt.

Mr. MURRAY.—You had assistance in the office?

A. Yes, sir. A bookkeeper and stenographer.

Witness excused. [9]

Memorandum of Decision of Referee.

This matter came on for hearing upon the exceptions filed by the trustee to the claim of W. C. Davie filed herein in the sum of \$587.55 for salary earned by him as general manager of the bankrupt corporation within the six months next prior to the adjudication herein, claiming priority of payment therefor. The trustee objects to the claim for priority of payment upon the ground that the claimant was the president, and general manager, and the owner of all the capital stock except a few shares.

When Mr. Davie took charge as general manager it was under a reorganization of the company. The old board was made up of Dr. Francis, Mrs. Davie and Mr. Davie, the claimant. Dr. Francis was general manager at a salary of \$300 per month. The new board was made up of Mr. Davie, Mrs. Davie, and Mr. Dysart, with Mr. and Mrs. Davie owning all the capital stock but one share held by Dysart. Dysart was secretary and Davie president and general manager. As general manager Davie was to have the same salary as his predecessor, Dr. Francis. The salary was fixed by the old board and not changed by the new board. (Transcript, pp. 2 and 3.)

Treating the corporation as an entity and as distinct from the owners of its shares, and its officers, as considered by Judge De Haven in *In Re Swain Co.*, 194 Fed. 749, and the state supreme court in *Cors & Wegener vs. Ballard Iron Works*, 41 Wash. 390-4, Mr. Davie in the capacity of general manager was a servant of the corporation, and entitled to

claim priority for his six months' salary as claimed by him. My holdings heretofore have been that a general manager could not claim priority of [10] payment under section 117, Title 309, Pierce's Code, unless he had filed his notice of lien as provided in the following section, section 119, title 309; but I have been overruled on that point, and I find that the courts have held the other way. *Cors & Wegener vs. Ballard Iron Works*, *supra*, follows section 125, Title 309, Pierce's Code, which section dispenses with the filing of the notice of lien where insolvency proceedings intervene before the expiration of the time in which a lien notice must be filed.

Mr. Davie filed his claim herein following the decision in *Re Johnson Creek Lumber Co.*, No. 1771, relying upon that decision. There is no difference between the two cases except that Mr. Davie was an officer of the bankrupt, and its chief shareholder. But a similiar situation existed as to the chief claimants in *Cors & Wegener vs. Ballard Iron Works*, *Supra*.

I think Mr. Davie's claim is within the law and the facts and that he should have priority of payment thereof.

Tacoma, Wash., July 30, 1915.

R. F. LAFFOON,
Referee in Bankruptcy.

(Filed Jul. 30, 1915.) [11]

[Title of Court and Cause.]

Order (of Referee Overruling Objections).

This matter heretofore having come on for hearing on the objections of W. W. Keyes, the trustee

herein, to the claim of W. C. Davie, filed herein for the sum of \$587.55, in so far as the same purports to be a lien claim or claim entitled to priority of payment and the counsel for said trustee and said claimant having filed briefs herein and the court having fully considered the matter, now on motion of said claimant's attorney, it is

ORDERED that the objections of said trustee to said claim in so far as the same purports to be a lien claim or claim entitled to priority of payment be and the same is hereby overruled and disallowed and said claim allowed as a lien claim herein for the sum of \$587.55.

Dated August 7th, 1915.

R. F. LAFFOON,
Referee in Bankruptcy.

(Filed Aug. 6, 1915.) [12]

To the Honorable R. F. LAFFOON, Referee in
Bankruptcy:

The petition of W. W. Keyes, the trustee, herein respectfully represents:

That on the 5th day of August, 1915, an order, the copy of which is hereunto annexed, and marked exhibit "A," and made a part hereof, was made and entered herein. That such order was and is erroneous in that it overrules the objections of your trustee to the claim of W. C. Davie, filed herein for the sum of \$587.55, in so far as the same purports to be a lien claim or claim entitled to priority of payment.

WHEREFORE, your trustee feeling aggrieved because of such order believes that the same should

be reviewed as provided in the Bankruptcy Law of 1898 and General Order XXVII.

W. W. KEYES,
Trustee.

(Filed Aug. 7, 1915.) [13]

[Title of Court and Cause.]

Certificate on Review.

To the Hon. EDWARD E. CUSHMAN, District
Judge:

I, R. F. Laffoon, the referee in bankruptcy in charge of this proceeding, do hereby certify:

That, in the course of such proceedings, an order, a copy of which is annexed to the petition herein-after referred to, was made and entered on the 7th day of August, 1915.

That, on the 7th day of August, 1915, W. W. Keyes, the trustee in such proceeding, feeling aggrieved thereat, filed a petition for a review, which was granted.

I hereto attach my memorandum of decision, which states the evidence as succinctly as it is possible for me to state it.

That the question involved and presented for review is whether or not W. C. Davie, the general manager of the bankrupt corporation, is entitled to have priority of payment for salary claimed by him as accruing during the six months next prior to the institution of the bankruptcy proceedings herein, he being at the same time the principal owner of the bankruptcy corporation.

I hand up herewith, for the information of the judge, the following: (1) Petition for review; (2) order therein; (3) memorandum of decision; (4) transcript of testimony; (5) objections to claim; (6) claim of W. C. Davie; (7) brief of trustee on objections to claim; (8) brief of claimant.

Dated, Tacoma, August 11, 1915.

R. F. LAFFOON,
Referee in Bankruptcy.

(Filed Aug. 11, 1915.) [14]

[Title of Court and Cause.]

Memorandum Decision, Filed November 2, 1915.

RAYMOND J. McMILLAN, E. K. MURRAY,
for Trustee.

VAN M. DOWD, for Claimant.

CUSHMAN, District Judge.

This matter is before the Court for review of the referee's order allowing, as preferred, the claim of W. C. Davie, general manager of the bankrupt corporation, on account of services performed within six months prior to bankruptcy.

Similar questions have been before the Court heretofore in the matter of the Northwest Brick & Lime Company, Johnson Creek Lumber Company and Wisconsin Lumber Company.

The order of the referee is approved and affirmed on the authority of the decision in these cases and that of Judge Hanford In re Lawler (110 Fed. 135) and Cors & Wegener v. Ballard Iron Works (41 Wash. 390). The Circuit Court of Appeals of this circuit has not yet ruled whether the statute of the State providing for priority of payment in insol-

vency proceedings under the State law is supplanted by the bankruptcy act dealing with the same subject. *Blessing v. Blanchard* (223 Fed., 35 at 38). [15]

[Title of Court and Cause.]

Order Affirming Referee's Order.

This matter heretofore having come on for hearing on the petition of W. W. Keyes, the trustee herein, for review of the order of the referee in bankruptcy, dated July 30, 1915, allowing the claim of W. C. Davie, filed herein for the sum of \$587.55, in so far as the same purports to be a lien claim or claim entitled to priority of payment, and the counsel for said trustee and said claimant having filed briefs herein and the Court having fully considered the matter, now on motion of the attorney for said claimant, it is

ORDERED that the order of the referee in bankruptcy, dated July 30, 1915, allowing the claim of W. C. Davie for the sum of \$587.55 in so far as the same purports to be a lien claim or claim entitled to priority of payment be and the same is hereby affirmed, to which said trustee excepts, and his exceptions are allowed.

Dated this 7th day of December, 1915.

EDWARD E. CUSHMAN,

Judge.

(Filed Dec. 7, 1915.) [16]

[Title of Court and Cause.]

Assignment of Errors.

Comes now W. W. Keyes, trustee and appellant, and files the following assignment of errors:

First. That the United States District Court for the Western District of Washington erred in concluding that the statutes of the State of Washington providing for priority of payment to labor claimants in insolvency proceedings was not supplanted by the provisions of the Bankruptcy Act of 1898 dealing with the same subject.

Second. That the Court erred in concluding that the claimant, W. C. Davie, who was the president, one of the directors and the principal stockholder of the bankrupt corporation, was entitled to a lien under and by virtue of the laws of the State of Washington for his services rendered to said bankrupt as its general manager.

Third. That the Court erred in finding that the proof of claim filed by the claimant W. C. Davie stated facts sufficient to entitle him to a lien or priority of payment.

Fourth. That the Court erred in making its order affirming the order of the referee allowing the claim of W. C. Davie as a lien and priority claim and overruling the objections of the trustee thereto. [17]

WHEREFORE, the trustee prays that the order of the District Court of the United States for the Western District of Washington be reversed and that this cause be remanded for such further pro-

ceedings as are consistent with law and justice.

RAYMOND J. McMILLAN,
E. K. MURRAY,

Attorneys for Trustee.

(Filed Dec. 15, 1915.) [18]

[Title of Court and Cause.]

**Petition for Appeal to Circuit Court of Appeals from
Order Allowing Lien Claim and Order Allowing
Appeal.**

To the Honorable EDWARD E. CUSHMAN, Judge
of the United States District Court for the West-
ern District of Washington:

W. W. Keyes, the trustee in the above-entitled proceedings, conceiving himself aggrieved by the final order entered in this proceeding on the 7th day of December, 1915, affirming the order of the referee to whom this proceeding was referred allowing the claim of W. C. Davie as a lien and priority claim for the sum of \$587.55 and overruling the objections of said trustee thereto, does hereby petition for an appeal from said order to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that his appeal may be allowed and said order reversed, and a citation granted directed to said W. C. Davie, claimant, commanding him to appear before the United States Circuit Court of Appeals for the Ninth Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the records, proceedings and evidence in said proceeding, duly authenticated, may be trans-

mitted to the United States Circuit Court of Appeals for the Ninth Circuit.

W. W. KEYES,
Trustee.

RAYMOND J. McMILLAN,
E. K. MURRAY,
Attorneys for Trustee.

(Filed Dec. 15, 1915.) [19]

[Order Allowing Appeal.]

The foregoing appeal is hereby allowed.

Dated December 20th, 1915.

EDWARD E. CUSHMAN,
District Judge. [20]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify the foregoing and attached to be a true, full and correct transcript of the papers and proceedings in the case of Chehalis River Lumber & Shingle Company, Bankrupt, No. 1655, lately pending in this Court, as required by the stipulation of counsel filed in this cause, as the originals thereof appear on file in this Court, at Tacoma, in the District aforesaid.

I further certify and attach thereto the original Citation issued in this cause.

I further certify that the following is a full, true

and correct statement of all expenses, costs, fees and charges incurred and paid in my office, by and on behalf of the appellant herein, for making the record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, to wit:

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate and return, 30 folios @ 15¢.....	4.50
Clerk's certificate to transcript, 2 fo. @ 15¢.....	.30
Seal to said certificate.....	.20

ATTEST my hand and the seal of the United States District Court, at Tacoma, in this District, this 21st day of December, A. D. 1915.

[Seal]

FRANK L. CROSBY,
Clerk.

By E. C. Ellington,
Deputy Clerk. [21]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. 1655.

In the Matter of CHEHALIS RIVER LUMBER
& SHINGLE COMPANY, a Corporation,
Bankrupt.

Citation on Appeal.

United States of America,—ss.

The President of the United States to W. C. Davie,
Greeting:

You are hereby cited and admonished to appear
in the United States Circuit Court of Appeals for the

Ninth Circuit, in the city of San Francisco, California, on the 20th day of January, 1916, pursuant to the appeal duly obtained and filed in the clerk's office of the District Court of the United States for the Western District of Washington, Southern Division, wherein you as claimant are appellee and W. W. Keyes, trustee, is the appellant, to show cause, if any there be, why the final order in said appeal mentioned should not be reversed and corrected, and why speedy justice should not be done to the parties in that behalf and to do and receive what may appertain to justice to be done in the premises.

WITNESS the Honorable EDWARD E. CUSHMAN, United States Judge for the Western District of Washington, on the 20th day of December, 1915.

[Seal]

EDWARD E. CUSHMAN,

District Judge.

Due service of within citation admitted this 20th day of December.

VAN M. DOWD,

Attorney for Claimant and Appellee.

[Endorsed]: No. 1655. United States District Court, Western District of Washington, Southern Division. In the Matter of Chehalis River Lbr. & Shingle Co., a Corporation, Bankrupt. Citation on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Dec. 20, 1915. Frank L. Crosby, Clerk. By E. C Ellington, Deputy.

[Endorsed]: No. 2717. United States Circuit Court of Appeals for the Ninth Circuit. W. W. Keyes, Trustee of the Estate of Chehalis River Lumber & Shingle Company, a Corporation, Bankrupt, Appellant, vs. W. C. Davie, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Western Division.

Filed December 27, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.